

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 1999 at 8:00 A.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 450, 2/12/1999; SB 451,  
2/12/1999; SB 456, 2/12/1999;  
SB 473, 2/12/1999; SB 476,  
2/12/1999; SB 477, 2/12/1999;  
SB 486, 2/12/1999  
Executive Action: SB 473; SB477; SB390; SB461;  
SB463; SB303

**EXECUTIVE ACTION ON SB 390****Discussion:**

**Al Smith, Montana Trial Lawyers**, explained the amendments and the gray bill to **SB 390**. **EXHIBIT(jus39a01)**

**Motion:** **SEN. BISHOP** moved that **AMENDMENTS TO SB 390 BE ADOPTED**.

**Discussion:**

**SEN. RIC HOLDEN** said he didn't see the safeguard for the insurer in the areas of fraud. Where is this protection for the employer if he is able to prove that everything wasn't what the claimant was alluding to? **Al Smith** said the protection is that it has to go to the Workers' Compensation court and they have to determine if it was wrong for the insurer to deny the benefits.

**SEN. HOLDEN** asked if the Workers' Compensation court ruled that the insurer was right, then what would happen? **Al Smith** said the worker would not get those benefits nor would the attorney. If there was medical bills that the claimant had incurred they would be responsible.

**SEN. HOLDEN** asked if the insurer likewise would be responsible for his defense costs in defending the employer? **Al Smith** said yes, that is current law.

**SEN. REINY JABS** referred to the gray bill, and asked if the award granted by the judge is greater than the amount paid or offered by the insurer, then what happens? **EXHIBIT (1) Al Smith** said often times there is a dispute between the insurer and the claimant as to the type of medical benefits that are needed to get back to work. This dispute may be between the insurer and the treating physician as to what treatment is necessary. He used the example of someone who had a shoulder injury and the treating physician recommends that they needed a certain type of surgery and the insurer says all they need is rehabilitation benefits. If the insurer offers \$2000 for the rehabilitation and the physician says "no" that won't work, then the claimant gets an attorney and goes through the system. They prove to the judge that the surgery is needed and the insurer would pay the surgery cost plus the attorney fees.

**SEN. SUE BARTLETT** asked in order for an attorney to get paid the insurer has to pay or submit a written offer of payment. The case has to have gone to the Work Compensation judge and if he finds in favor for the claimant the amount of money has to be greater than the amount that was originally paid or offered by the

insurance company. She asked if there had to be those three conditions before an attorney would receive costs and fees. **Al Smith** said that was correct and the judge has to accept the medical proof that those medical treatments were needed by the worker.

**SEN. BARTLETT** asked how subsection 4, on page 2 reads in terms of setting forth those criteria on the gray bill. **EXHIBIT (1)**

**Valencia Lane** said this section is okay and it is similar to SB 303.

**SEN. HOLDEN** read lines 19 and 20 of the original bill, and he asked why people didn't get paid their medical benefits. **Al Smith** said this is why medical benefits were put in the original bill because there is a question as to whether attorney fees can be paid on medical benefits.

**SEN. HOLDEN** said if a claim goes to the court and it involves medical benefit payments only, then the attorney fees have to be paid over and above the medical benefits that the claimant can prove should of been paid originally. **Al Smith** said that is correct.

*{Tape : 1; Side : A; Approx. Time Counter : 8:27 a.m.}*

**SEN. HOLDEN** asked if the only way they could collect attorney fees is if they went before the judge and he made a determination. **Al Smith** said that is correct.

**SEN. HOLDEN** questioned this change in policy that the insurer will pay attorney fees if the judge rules in favor for the medical claims. **Nancy Butler, State Fund**, discussed the amendments. **EXHIBIT (1)** She said there would be some increased costs and perhaps increased litigation, but it would not be significant.

**SEN. HOLDEN** asked where they would put in "reasonable" as applied to medical claims? **Nancy Butler** said page 2 of the gray copy, subsection one and four needs to be added to the language under subsection 2. This would provide for the unreasonable standard to apply to both medical and compensation benefits.

**SEN. HOLDEN** asked if this would cover the State Fund for having to prove if they were reasonable or unreasonable. **Nancy Butler** said if they put that language back in it would provide the insurer only pay fees if they were unreasonable for both medical and indemnity benefits.

**SEN. HOLDEN** said in general terms, they look at this as only one action against the employer, if a claim is for medical bills only or medical bills plus pain and suffering. He said he would like to include medical benefits specifically. **Nancy Butler** asked if he was thinking of not having the unreasonable standard apply to medical benefits, but only if they lose in court do they have to pay.

**SEN. HOLDEN** asked if there was no definition of medical benefits on line 12, page 1, from the claimants standpoint they are not entitled attorney fees? **Nancy Butler** said she has never interpreted this section of law and amendments may make it better. The important thing is if the unreasonable standard applies to medical benefits or not.

**SEN. HOLDEN** said the medical benefit part of this bill is not that important, it is the unreasonable language that was stricken that is important. **Nancy Butler** said that was correct, they would not want medical benefits excluded.

**SEN. HOLDEN** asked what other technical problems are there with this bill? **Nancy Butler** said an offer is to be made 60 days prior to a hearing and 39-71-612 has 30 days for current law for indemnity benefits. The judge tries to set trial within 75 days of the filing deadline, 60 days does not give them much time to even do basic discovery.

**CHAIRMAN LORENTS GROSFIELD** asked what the 60 days should be changed to? **Nancy Butler** said it should be changed to 30 days.

**SEN. BARTLETT** asked what the process is before they get to the point of filing a case with the compensation court? **Nancy Butler** said if the claimant disagrees with the insurers initial decision they can at that point file for mandatory mediation. It is informal and non-binding and doesn't have to be represented by an attorney. If at that point the worker is unhappy with the mediators decision, then a petition can be filed with the Workers' Compensation Court.

**SEN. BARTLETT** asked how much information is available through the mediation process and is it mandatory. **Nancy Butler** said the mediation process is mandatory and the mediator has the entire file to look at.

**SEN. BARTLETT** asked what the claimant on the other side provides to the mediator. **Nancy Butler** said they are free to provide any information that they have.

**CHAIRMAN GROSFIELD** asked if they want to change 60 days to 30 days. **Al Smith** said perhaps they should change it to 45 days, this still gives the State Fund 30 days after a petition has been filed to be able to make that determination.

**CHAIRMAN GROSFIELD** asked if 45 days was okay? **Nancy Butler** said she would keep it consistent, regardless, but would rather have it be 30 days.

**SEN. BISHOP** said he would rather keep it at 60 days.

**SEN. HOLDEN** said he would rather keep it at 30 days to be consistent with the statute.

**SEN. BARTLETT** said it needs to be consistent no matter what the time period is.

**Substitute Motion/Vote:** **SEN. HOLDEN** made a substitute motion to **IMPLEMENT 30 DAYS INTO THE AMENDMENTS.** **Substitute motion carried 5-3 on a roll call vote.**

**Discussion:**

**CHAIRMAN GROSFIELD** asked if they wanted to add subsection (4) to the amendments. **(EXHIBIT 1)**

**Motion/Vote:** **SEN. HOLDEN** moved to **ADD SUBSECTION (4) TO #11 IN THE AMENDMENTS. (EXHIBIT 1)** **Motion carried 5-3 on a roll call vote.**

**Discussion:**

**Valencia Lane** said if they insert a reference to sub-section 4 in #11 then #13 is redundant and the last sentence of amendment #13 should be stricken. On the gray bill, page 2, 39-71-612, sub-section (2) is redundant to the last sentence in sub-section (4) and should be stricken.

**Motion/Vote:** **SEN. BISHOP** moved **TO DELETE THE LAST SENTENCE OF AMENDMENT #13.** **Motion carried 8-0.**

*{Tape : 1; Side : A; Approx. Time Counter : 8:48 a.m.}*

**Discussion:**

**CHAIRMAN GROSFIELD** asked how does **SB 390** relate to **SB 303.**

**SEN. HOLDEN** said **SB 303** is a different concept and is not even in the same area of the law. **SB 303** asks the question if an attorney can place a lien for his services on medical benefits. The medical community does not want the attorney to be able to do this.

**SEN. GROSFIELD** said as **SB 303** came out of committee they had lines 9-21 that dealt with the same issues they are discussing in **SB 390**.

**SEN. HOLDEN** said this needs to be stricken because it is already in **SB 390**.

**Motion/Vote:** **SEN. BISHOP** moved that **SB 390 DO PASS AS AMENDED**.  
Motion carried 8-0.

#### **EXECUTIVE ACTION ON SB 303**

**Motion:** **SEN. HOLDEN** moved to **STRIKE LINES 9-21 ON PAGE 4 OF SB 303**.

#### **Discussion:**

**SEN. STEVE DOHERTY** said it needs to stay in there.

**CHAIRMAN GROSFIELD** said the Senate sent this bill back because they wanted something different.

**SEN. DOHERTY** said the proposed amendment on the floor was to strip everything out that **SEN. HOLDEN** is proposing and the vote was enormous against it. This is why it came back to committee.

**SEN. HOLDEN** said this was incorrect the Senate never voted to remove this language, they voted to put in the reasonable standard clause. And leadership decided to send it back to committee. He said they have been more than fair with trial attorneys in this area as far as medical benefits are concerned.

**Substitute Motion:** **SEN. BARTLETT** made a substitute motion that **SB 303 BE TABLED**.

#### **Discussion:**

**SEN. BARTLETT** said these issues have already been covered in **SB 390**.

**CHAIRMAN GROSFIELD** said on page 4, lines 7 and 8 this concept will not be covered if they table the bill.

**SEN. BARTLETT** said in **SB 390** insurers will pay the attorney fees and this may not be an issue.

**SEN. HOLDEN** said he supports the motion to table. He said if they look at lines 7 and 8 this is a self serving bill for medical providers. It entails more than medical providers, it also includes attorneys and insurance carriers. Attorneys are an important piece of the puzzle as often times they help hold down the cost of medical bills.

**CHAIRMAN GROSFIELD** said on page 2, there is also the issue of 69 percent of hospital charges, but he also supports the motion to table.

**Vote:** Motion carried 8-0.

*{Tape : 1; Side : B; Approx. Time Counter : 9:00 a.m.}*

**HEARING ON SB 476**

**Sponsor:** SEN. AL BISHOP, SD 9, BILLINGS

**Proponents:**

Mike Foster, MT Contractors Assoc.  
Ed Maronick, Maronick Construction  
John Cadby, MT Bankers Assoc.  
Carl Schweitzer, Sub-Contractors Assoc.  
Gene Schadt, Helena Sand and Gravel

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. AL BISHOP, SD 9, BILLINGS,** said this bill regards construction liens. The construction industry and the bankers want to make language that is plain to a layman. The second stage is to have a pilot program with the Secretary of State to file electronically.

**Proponents' Testimony:**

**Mike Foster, MT Contractors Assoc.,** said the current lien law is confusing and cumbersome to the average person and the construction industry. They want to do a pilot project for electronically filing liens and the notice of intention for filing a lien. This pilot project would be similar to the one that is being done for motor vehicle liens. They also want to

address the notice of intent to file a lien or notice of right to claim a lien. This language will simplify that and both the consumers and construction industry will benefit from the language that is in this bill. He said the Clerk and Recorders are concerned about the possible revenue loss. It was never their intention to cause any fiscal harm to a county. It is more simple when they deal with a pilot project to have a central storage place and the Secretary of State's office could handle this.

**Ed Maronick, Maronick Construction**, said there are two parts to this bill. The first is simplifying the notice of intent to file a lien. This intent is only required in residential property to the home owner, etc.. It notifies them that they may have to pay twice for the same services and it tells them how to protect themselves. This notice has to be sent 20 days before the beginning of the project and this time frame has not been workable and tough to meet. This bill is trying to simplify the legal jargon in current language that is confusing. Many people think the construction company has immediately filed a lien and this is not true. This bill will eliminate that and put it into layman's terms. They have also changed the format of the notice. The second part of the bill is the electronic filing of the liens. They currently do it with the Clerk and Recorder and it would be easier to do it electronically.

**John Cadby, MT Bankers Assoc.**, said the current process is cumbersome and time consuming to file these notices with the county. The purpose is to make the public aware of what liens have been filed. The banks are already hooked into the Secretary of State's office, so it is easy for them to file UCC liens, but it is not very easy for the contractor to file his liens. They want to use the same pilot that is being used for motor vehicle liens and apply the same operation to construction liens. This link is on the Internet and if they are a contractor, etc. they can search and file construction or notice liens. The homeowner will get even more protection under this system than they had before. There is no money out of the taxpayer's pocket or the State of Montana.

**Carl Schweitzer, Sub-Contractors Assoc.**, said their biggest problem is the ability to file liens. He hopes the system will be big enough to handle everyone that is interested in participating in this process.

**Gene Schadt, Helena Sand and Gravel**, said he receives many phone calls of concern and questions when they send out the present notice. The language is very legal and almost immediately says to contact your lawyer. The bottom of the notice explains it is

layman's terms, but most people never get that far. This will allow the homeowner to interpret it more clearly.

**{Tape : 1; Side : B; Approx. Time Counter : 9:17 a.m.}**

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. MIKE HALLIGAN** said he wants to make sure that the changes still gives proper notification. He asked if there is still local notice and how do they handle sub-contractor notices? **Mike Foster** said the notice still has to be presented to the owner. The actual filing though can be done electronically.

**SEN. BARTLETT** said there is a fundamental public policy here that has not been addressed. She said in every other instance where a lien has been directed to the Secretary of State's office, it is on personal property only. This will be the first time that there will be an attachment to real property. And this will be the first time it will be filed somewhere else besides the County Clerk and Records office. Construction liens always attach to real property. Is this good policy to change the area in which it is filed? **SEN. BISHOP** said they can still file with the Clerk and Recorder. He said he doesn't know of any other documents regarding real property that is filed with the Secretary of State.

**SEN. BARTLETT** said the whole purpose of the interim committee was to make sure that the individual homeowner had adequate notice and how to protect themselves from construction liens.

**Closing by Sponsor:**

**SEN. BISHOP** said nothing is as complicated as lien law and he has represented people who have had to pay twice. This is not an uncommon thing.

**{Tape : 1; Side : B; Approx. Time Counter : 9:24 a.m.}**

**HEARING ON SB 450**

**Sponsor:** **SEN. J.D. LYNCH, SD 19, Butte**

**Proponents:**

**Belinda Fargher, Ambassador Notary Assoc.**  
**William Gowen, Abstract and Title Co.**

**Opponents:**

**Don Coburn, Self**

**Informational Testimony:**

**Angela Fultz, Secretary of State's Office**

**Opening Statement by Sponsor:**

**SEN. J.D. LYNCH, SD 19, Butte, opened on SB 450.**

**Proponents' Testimony:**

**Belinda Fargher, Ambassador Notary Assoc.,** said they would like to have some kind of classroom instruction for notaries. Many notaries do not understand their primary functions. They feel they can notarize any type of document under any type of circumstance whether the person is in front of them or not. This instruction would help deter fraud. The second area is to request that the notary use a journal. Every time a person comes in front of the notary to sign a document they give the date, time, type of document and their name and address and have them sign. They also want to identify signers. Currently they show a driver's license but many do not drive because they are under the age or it has expired. They need to have proof that the individual was in front of them.

**SEN. BISHOP** took over the chair.

**William Gowen, Abstract and Title Co.,** said when they are doing deeds, etc. for real property it is very important to know who they are notarizing deeds for. It is a policy in their office to already do everything that this bill is requiring. It is important to educate the notary.

**Opponents' Testimony:**

**Don Coburn, Self,** handed in testimony in opposition of the bill.  
**EXHIBIT (jus39a02)**

**Informational Testimony:**

**Angela Fultz, Secretary of State's Office,** said they would like to know who is going to provide the education and this needs to be clarified.

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked if the Secretary of State still sends out packets that explain the procedures of becoming a notary? **Angela Fultz** said yes, they provide that so people who become notaries understand the duties and responsibilities of the job.

**SEN. HALLIGAN** asked how they intended to provide the education component. **Belinda Fargher** said there are different notary institutions and colleges that offer these courses.

**SEN. HALLIGAN** asked if everyone who became a notary would have to take these courses? **Belinda Fargher** said that was correct.

**SEN. HALLIGAN** asked if the funding would come from the fees that are in the bill? **Belinda Fargher** said this was correct. She said as an example, a person pays to take courses from the National Notary Assoc. out of California.

**SEN. HALLIGAN** asked if other states have this education component and journal. **Belinda Fargher** said 75 percent of the states require a journal and the education.

**SEN. HOLDEN** asked on page 3, lines 27-28, what this language was trying to accomplish? **Belinda Fargher** said when a notary is doing notarization that individual who is in front of them can say they are anyone. But with the proper identification card that is issued by a government agency it will prove who they are.

**SEN. HOLDEN** asked how they handle that if they don't have a driver's license or a photo ID. **Belinda Fargher** said if they have no identification then they have a third party or parent come and sign the journal.

**{Tape : 1; Side : B; Approx. Time Counter : 9:36 a.m.}**

**Closing by Sponsor:**

**SEN. LYNCH** said page 2, line 10, they may want to exempt law enforcement from this. Every time they give a citation, it has to be notarized and for them to have to go into a journal, may take a great deal of time.

**HEARING ON SB 451**

**Sponsor: SEN. J.D. LYNCH, SD 19, Butte**

**Proponents:**

**Belinda Fargher, Ambassador Notary Assoc.**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. J.D. LYNCH, SD 19, Butte,** read the title of **SB 451.**

**Proponents' Testimony:**

**Belinda Fargher, Ambassador Notary Assoc.,** said there will be a fee if a notary changes their name or address. It is important so that if there is any wrong doing the Secretary of State will know how to find them.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**SEN. LYNCH** closed on **SB 451.**

*{Tape : 2; Side : A; Approx. Time Counter : 9:40 a.m.}*

**HEARING ON SB 456**

**Sponsor:** **SEN. BILL WILSON, SD 22, Great Falls**

**Proponents:**

**Ronda Carpenter, MT Housing Providers**  
**Greg Van Horssen, MT Housing Providers**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. BILL WILSON, SD 22, Great Falls,** said this bill provides that a landlord may be represented in a justice court when an issue arises between a landlord and a tenant. It allows a property manager to act on behalf of a landlord. The landlord may be an absentee landlord, they live in Arizona for the winter, or they are serving in the legislature, etc.. What is problematic is when a difficulty arises under current law the landlord has to

hire an attorney or return to the place of dispute and represent themselves.

**Proponents' Testimony:**

**Ronda Carpenter, MT Housing Providers**, said this problem arose when they started licensing property managers. The property manager is managing for someone who is retired, a snowbird, etc. The property manager does all the work in place of the landlord. If there is a dispute and it goes to justice court the manager cannot represent the landlord, they must come back and represent themselves. The landlord doesn't know what is going on and it is the property manager who knows what is happening with the dispute. This bill isn't asking just anyone to represent the landlord, only the property manager can do this.

**Greg Van Horssen, MT Housing Providers**, read the language of 25-31-601. He said justice court is the usual venue for landlord-tenant disputes. The reason for that is there is not very much money involved. He said often the landlord is an absentee owner and the managers are often the only people who truly understand the facts and circumstances surrounding the dispute. Justice court has limited jurisdiction and this bill will allow property managers to go in and represent the landlord.

***{Tape : 2; Side : A; Approx. Time Counter : 9:48 a.m.}***

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked what happens if a landlord wants to sue the property manager for not effectively representing them in court?

**Greg Van Horssen** said this may occur, but malpractice insurance would help with this process. The landlord knows full well that this manager is not an attorney at law, but they choose to have them represent the landlord in Justice court and take the risk of doing this.

**SEN. HALLIGAN** asked if they could develop a notice requirement that included representation in a justice court and that they understand this is not legal counsel, etc. **Greg Van Horssen** said he would speculate that if this bill passed the property managers would have some type of language written into their management contracts to protect them.

**SEN. HALLIGAN** said sometimes there are triple damages awarded to the defendants because the landlord hasn't followed the rules, etc.. The property manager may want to have some liability

insurance to protect themselves from the landlord. **Greg Van Horssen** agreed.

**SEN. JABS** asked if the manager would have to have a document to prove to the court that he is representing the landlord. **Greg Van Horssen** said there would need to be some documentation from the property owner that the manager could carry to the court and represent the landlord.

**SEN. GRIMES** asked if they are trying to clarify a Supreme Court interpretation or correct it and they are doing so in a very limited area. This only applies to landlords and there are several other scenarios where this could exist. **Greg Van Horseen** said this bill is trying to narrow the type of representation. He said any time they try to expand, they run into problems. He said they want to make sure that the people who are representing the landlord have the facts of the rental agreement and can give in detail the dispute to the courts.

**Closing by Sponsor:**

**SEN. WILSON** said this is a problem where people are absentee landlords and they want to delegate these disputes to someone who manages the property and is closer to the issues.

*{Tape : 2; Side : A; Approx. Time Counter : 9:56 a.m.}*

**HEARING ON SB 477**

**Sponsor:** **SEN. DALE MAHLUM, SD 35, Missoula**

**Proponents:**

**Noel Larrivee, Missoula/Ravalli Transportation Assoc.**

**Opponents:**

**Al Smith, MT Trial Lawyers**

**Opening Statement by Sponsor:**

**SEN. DALE MAHLUM, SD 35, Missoula,** read the title of **SB 477**. He said if they go to larger cities they have lanes designated for ridesharing autos. Ridesharing is designed to save gasoline, automobiles, pollution, etc.. The firms that suggest ridesharing need immunity protection. This bill says that if a person is in a ridesharing vehicle and they get into an accident they will not sue the employer even if they recommended ridesharing.

**Proponents' Testimony:**

Noel Larrivee, Missoula/Ravalli Transportation Assoc. rose in support of SB 477. **EXHIBIT(jus39a03)**

**Opponents' Testimony:**

Al Smith, MT Trial Lawyers, said they oppose granting immunity and believe people, businesses, etc. should be responsible for their actions. This bill talks about incentives, but the question is what if there is a requirement by the employer that they have to participate in ridesharing and would they be immune. He said in sub-section 2, perhaps the word subsidize should be added to owned and leased. This bill has no instruction as to where it is going in the code.

**Questions from Committee Members and Responses:**

SEN. HALLIGAN asked what the liability issue is with respect to an employer who may pay mileage. Noel Larrivee said if an employer subsidizes an activity there is still no more liability.

SEN. HALLIGAN asked how Workers' Compensation would deal with this. Noel Larrivee said there is no conflict.

**Closing by Sponsor:**

SEN. MAHLUM said this bill doesn't attempt to discriminate against employees and is helpful in today's business climate.

*{Tape : 2; Side : A; Approx. Time Counter : 10:11 a.m.}*

Committee took a break from 10:11 to 10:30 a.m.

**HEARING ON SB 473**

**Sponsor:** SEN. STEVE DOHERTY, SD 24, Great Falls

**Proponents:**

Al Pontrelli, MT Assoc. of Life Underwriters

**Opponents:** None

**Opening Statement by Sponsor:**

SEN. STEVE DOHERTY, SD 24, Great Falls, opened on SB 473.  
**EXHIBIT(jus39a04)**

**Proponents' Testimony:**

**Al Pontrelli, MT Assoc. of Life Underwriters**, said there is some confusion in the bill. The first one is the disposition of death benefits from life insurance. He said he wanted to make sure that death benefits were not a part of the probate estate and it is not.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked what the language on page 8, lines 6-8 meant?

**SEN. DOHERTY** said in trying to determine the value of any interest in income, annuities, or trusts, can be difficult in closing estates. This brings it into compliance with the statutes and makes it look at the treasury regulations in effect at the time of the descendant's death.

**CHAIRMAN GROSFIELD** asked what section does this come from? **SEN. DOHERTY** said this comes from the trust and probate section of the State Bar.

**Closing by Sponsor:**

**SEN. DOHERTY** closed on **SB 473**.

**CHAIRMAN GROSFIELD** took over the chair.

*{Tape : 2; Side : A; Approx. Time Counter : 10:37 a.m.}*

**EXECUTIVE ACTION ON SB 477**

**Motion:** **SEN. BISHOP** moved that **SB 477 DO PASS**.

**Discussion:**

**SEN. BARTLETT** asked if the people that are being granted immunity under this bill have any liability to begin with? **SEN. HOLDEN** said maybe this is a problem in Missoula, but not in his area. He said he doesn't think they should be suing people because they suggest ridesharing.

**SEN. GRIMES** said perhaps they could add the word "subsidize" on line 15 and make sure this is not mandatory.

**SEN. JABS** said he didn't think any employer would make it mandatory that people share rides.

**CHAIRMAN GROSFIELD** asked if there is such a thing as mandatory ridesharing in Montana? **SEN. BARTLETT** said she didn't know that there was, but it is not an impossibility.

**Motion/Vote:** **SEN. GRIMES** moved to **INSERT THE WORD "VOLUNTARY" ON LINE 11 AND LINE 14 BEFORE RIDESHARING. Motion carried 8-0.**  
**EXHIBIT (jus39a05)**

**Motion:** **SEN. GRIMES** moved to insert **"OR SUBSIDIZED," AFTER LEASED ON LINE 15.**

**Discussion:**

**SEN. JABS** said they are discouraging employers from having ridesharing and this should not be hindered.

**Valencia Lane** said they may want to go into lines 13 and 14 because this incorporates subsidies. The bill as drafted says the employer can get the immunity if he is subsidizing.

**SEN. GRIMES** withdrew his amendment.

**SEN. BARTLETT** asked if employers currently have any liability. **Valencia Lane** said she was not aware of any cases.

**Motion/Vote:** **SEN. GRIMES** moved that **SB 477 BE TABLED. Motion failed 3-5 on a roll call vote.**

**Motion:** **SEN. JABS** moved that **SB 477 DO PASS AS AMENDED.**

**Discussion:**

**SEN. BARTLETT** said they never addressed the issue of employers subsidizing ridesharing, etc. and this needs some discussion.

**Motion:** **SEN. BARTLETT** moved **TO INSERT "OR SUBSIDIZE" ON LINE 15, ADDING A COMMA AFTER OWNED AND STRIKING "OR" AFTER OWNED TO BE ADOPTED.**

**Discussion:**

**Valencia Lane** explained this amendment further and suggested some technical changes.

**SEN. BARTLETT** asked if they still needed to go into lines 13 and 14? **Valencia Lane** said on line 9 put in, "except as provided in subsection (2)".

**SEN. BARTLETT** said she would make that a part of her amendment.

**Motion:** **SEN. BARTLETT** moved **TO INSERT THE SUGGESTED LANGUAGE ON LINE 9 AND LINE 16. EXHIBIT (5)**

**Discussion:**

**SEN. JABS** said they should encourage employers to persuade their employees to do ridesharing. This amendment will discourage that.

**SEN. BARTLETT** said if the employer isn't subsidizing, it doesn't discourage them from doing voluntary ridesharing arrangements.

**Vote:** Motion **carried 7-2 with Holden and Jabs voting no.**

**Discussion:**

**SEN. HALLIGAN** said he doesn't know what kind of incentives they are talking about on line 13 and maybe this needs to be struck.

**Valencia Lane** said the "otherwise encourages" is fairly broad and unspecific, but it is a policy decision if they want to strike this.

**SEN. GRIMES** asked where this should go in the statutes? **Valencia Lane** said it goes in Title 27.

**Vote:** Motion **to DO PASS AS AMENDED SB 477 carried 7-1 with Grimes voting no.**

**EXECUTIVE ACTION ON SB 402 AND 403**

**SEN. HALLIGAN** wanted to know about joining this with the teachers criminal background checks. **Larry Fasbender, Department of Justice**, said HB 590 deals with teachers and other school administrators. If **SB 403** is passed then it would be their interest to have the same language that is in HB 590.

**SEN. HALLIGAN** asked if federal law will require them to do the background checks anyway and would they want some guidance here. **Larry Fasbender** said health care workers, nursing homes, etc. will now have access to this information. With or without this information they will be looking at a lot of background checks.

**SEN. BARTLETT** said she would like to amend it to provide the provisions that are in HB 590. The Department of Justice is going to have to process requests and it provides some consistency and guidance.

**SEN. GRIMES** asked if they could make this discretionary rather than mandatory, then he would feel better about the bill.

**CHAIRMAN GROSFIELD** said they would have to make it discretionary for the agency because this law is already in place on the federal level. **Mr. Fasbender** said right now under federal law they would have to do the check. Under this bill, as a minimum requirement they have to do a name check. They could go as far as doing a fingerprint check, but this has to be done anyway when it is requested.

**CHAIRMAN GROSFIELD** asked if they do not pass these bills then where are they? **Mr. Fasbender** said when requests are made they still have to process those. He said right now the way the current legislation is written it doesn't allow them to be hired on a temporary basis and this is important that this happens. These check are lengthy and could get longer as more are done.

**CHAIRMAN GROSFIELD** questioned what he meant by not being able to hire on a temporary basis. **Mr. Fasbender** said in order to limit some of the liability that the employer might have, they could hire on a temporary basis. A fingerprint check right now takes 4-6 weeks to process through the FBI. If the volume doubles or triples it could take longer than that.

**CHAIRMAN GROSFIELD** asked if they don't pass this bill then an employer would not be able to hire someone on a temporary basis? **Mr. Fasbender** said that is a possibility.

**SEN. HOLDEN** said he doesn't plan on voting for this bill because employers are supposed to be doing background checks and they don't need more of this on the books.

**SEN. MCNUTT** said the Department of Health and Human services is doing this already.

**SEN. JABS** said if they hire someone part-time and he is there for a year, by that time he have already proven himself. The biggest concern is in the first few weeks of employment and why hire him temporarily. **Mr. Fasbender** said the liability for not doing the check is the concern. Most will probably do the checks to avoid this liability.

**CHAIRMAN GROSFIELD** discussed SB 374 from last session and wanted to know if this bill was the same act. **Mr. Fasbender** said no.

**CHAIRMAN GROSFIELD** questioned the issue of the private liability of employers in the private sector. **Mr. Fasbender** said once that information is available, if the employer does not access that

information it puts them at a higher level of liability than they were before. Most employers are going to start running these checks because the information is now available to them. The time delay is going to increase substantially if they don't have the authorization to take fees from this. Most of the delays right now are at the federal level, but this is going to change.

**SEN. BARTLETT** said if Montana is expecting to double and triple in background checks, what is going to be coming out of California, Texas, Florida, etc. It could take them five years to process some of these checks. **Mr. Fasbender** said that is true it is going to increase, but at the same time a number of states are already doing this and it won't go up on the federal level as much.

**SEN. BARTLETT** asked if in HB 590 they have put in provisions to notify the applicants whose fingerprints are taken and checked of the limitations on the use of that information and their right to privacy. **Mr. Fasbender** said this has been addressed. The perspective employer fills out a notice and they have ample time to contest it if there are some changes, etc.

*{Tape : 2; Side : B; Approx. Time Counter : 11:16 a.m.}*

**SEN. BARTLETT** said she can see some benefits to these provisions.

**SEN. HOLDEN** referred to the fiscal note. He thought the department could take the money out of their budget to cover half a person. **Mr. Fasbender** said the fiscal note only applies to health care workers. They anticipate it will take a full FTE just to do the checks for the school and another for nursing homes. Three people will probably be necessary to take care of this.

**CHAIRMAN GROSFIELD** said he would like to see the amendments for HB 590 and federal legislation for this.

*{Tape : 3; Side : A; Approx. Time Counter : 11:23 a.m.}*

#### HEARING ON SB 486

**Sponsor:** **SEN. MIKE HALLIGAN, SD 34, Missoula**

**Proponents:**

**Betty Waddell, MT Assoc. of Churches**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. MIKE HALLIGAN, SD 34, Missoula**, referred to the first seven whereas' of the bill reinforcing Supreme Court decisions that have established the fundamental rights of parents to raise their children. This bill attempts to define third party rights when it comes to parental relationships that have been ordered by the court. There is no attempt to interfere with stable families. He said they have tried to define third party parental roles without upsetting the balance of the fundamental right to parent children. He said they need to pass laws to protect children and the Montana Constitution addresses this. He discussed the language on Page 3, line 13. He said he doesn't know if other states are doing this, but they are trying. There are situations where the parents are not necessarily unfit, but there are situations where grandparents, uncles, aunts, and other third parties are raising children. There is a need to address the child/parent relationship in the areas of care, education, physical needs, shelter, etc. If these types of relationships have been established then the question arises as to when the court can award the ability for someone else to parent besides the natural parent. The key is they are not terminating anybody's parental rights. This is addressed on Page 4, subsection 3. If the conduct of a natural parent is contrary to the parent/child relationship and it is shown by clear and convincing evidence, the court may award parental interest other than the natural parents. He read subsection 5, page 5. He said they are trying to address the parents voluntary conduct that has allowed someone else to parent their child. He used the example of a grandmother raising her daughter's three children because the mother has abandoned them and the father is in the Montana State Prison. They don't want the state to step in, they want extended families who have provided care to continue those parental relationships. It is difficult to balance the parent's Constitutional rights with the children's Constitutional rights. He turned in a letter by Judge Larson. **EXHIBIT(jus39a06)**

**Proponents' Testimony:**

**Betty Waddell, MT Assoc. of Churches**, said their primary concern is for children and the need to be protected. A child's need for relationship and belonging should be their primary concern. Children are best raised in a family. She said they no longer have nuclear families, 50 percent of the children, from birth to 18 at some time live with single parents. Families are not necessarily dysfunctional they are just different. Many third parties have children that are not of their blood, but are taking care of them. She said at one point her daughter's boyfriend was kicked out of his home and he lived with them for over a year.

She said if something would have happened to his parents they may have wanted a document that identified them as the custodial parents. Many rural people also board their children in town and if something happened to the natural parents the custodial parents might want to be identified.

***{Tape : 3; Side : A; Approx. Time Counter : 11:35 a.m.}***

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. GRIMES** said on page 5, line 12, this might have the opposite effect. Parents may decide to leave their children at home alone rather than giving them to somebody else knowing that they may potentially lose parental rights. **SEN. HALLIGAN** said he had not thought of that alternative effect. Native American communities use the extended families all the time and there is no attempt to try and upset that balance. He said his wife's parents provide care for their children two hours everyday after school. He is willing to look at language that may tighten this.

**SEN. GRIMES** said on page 4, he doesn't understand what lines 26-29 means. He is worried about a father from the past coming in and proving the other parent unfit, when simply they are trying to work two jobs and care for the children. **SEN. HALLIGAN** said unfit has been dealt with in the child abuse, neglect proceedings. He said they are still trying to deal with the parental control and when it yields to the child's fundamental right to a family unit.

**CHAIRMAN GROSFIELD** asked on page 5, line 12, what is the significant period of time? **SEN. HALLIGAN** said they put in 12 months so the courts could determine if this is a reasonable time and it could be done on a case by case measure.

**CHAIRMAN GROSFIELD** said this line says significant period of time so the courts may not think it is twelve months. He certainly doesn't want it to be two weeks, etc. and perhaps this needs to be spelled out. **SEN. HALLIGAN** agreed and that the words "failing to provide support for the child" at the end of that statement needs to be addressed.

**CHAIRMAN GROSFIELD** asked what kind of scenarios come up if they don't pass this bill. Why do they need this bill to legally establish a parent/child relationship. **SEN. HALLIGAN** said the only avenue now is through the abuse and neglect proceedings. There has to be harm to the child or their health and safety has been affected and in many cases this won't protect the best

interest of the child. If there is extended family who has been caring for children, they should have a separate civil right to be able to go in and argue that they have been parenting and they don't need to have the state interfere in this.

**CHAIRMAN GROSFIELD** said if he picked up a kid off the street and he provided a happy home life for several years, how does this scenario fit into this bill? **SEN. HALLIGAN** said it is probably kidnapping to do that. You couldn't enroll the child in school if you didn't have some legal authority, etc. In that example the state would probably have to interfere.

**CHAIRMAN GROSFIELD** said in his example, if this bill passed, would he have some kind of legal documentation to maintain. **SEN. HALLIGAN** said right now if he was the parent and came to get his children he would get them. This bill would give him the custodial right to be awarded parental powers.

**SEN. GRIMES** said if he took care of somebody's child for a length of time and then he thought there was something going on in the lives of the original parents that may be detrimental, could he have some standing to determine things like where the child should go to school, who they visit, etc.. **SEN. HALLIGAN** said that was correct, the statute allows for a child to be signed over for six months. He said in this case, he could develop the facts necessary for that child/parent relationship if the parents stay gone for an extended period of time.

**SEN. GRIMES** said this bill is set up in negative circumstances and maybe it could be voluntary in certain cases.

**Closing by Sponsor:**

**SEN. HALLIGAN** said they are not trying to terminate parental rights. Extended families are a very positive and stable thing. The language needs to be tighten up and this bill should be passed this session so those interests can start being balanced.

***{Tape : 3; Side : A; Approx. Time Counter : 11:51 a.m.}***

**EXECUTIVE ACTION ON SB 473**

**Motion/Vote:** **SEN. HALLIGAN** moved SB 473 DO PASS. Motion carried 7-0.

**EXECUTIVE ACTION ON SB 461**

**Motion:** **SEN. HALLIGAN** moved SB 461 BE TABLED.

**Discussion:**

**SEN. GRIMES** said there needs to be a longer term look at this issue and perhaps it needs to go to an interim committee.

**CHAIRMAN GROSFIELD** said they hear from time to time that there is a lot of problems concerning condemnation. But they never have a condemnation proceeding unless there is some disagreement. He said there are 5-7 eminent domain bills and this is not the end of this issue. But the language in this bill is far too broad.

**SEN. MCNUTT** said there are very few cases of condemnation and they only come about if there is a disagreement and they have to be resolved.

**Vote:** Motion **carried 8-1 with Holden voting no.**

**EXECUTIVE ACTION ON SB 463**

**Motion:** **SEN. HALLIGAN** moved **SB 463 DO PASS.**

**Discussion:**

**SEN. HALLIGAN** said he talked to the Department of Administration and they feel that even with the retroactive language, the language tells them to pay the attorney fees and the interest.

**CHAIRMAN GROSFIELD** said this bill clarifies the law more.

**Vote:** Motion **carried unanimously 8-0.**

**ADJOURNMENT**

Adjournment: 12:05 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JODI PAULEY, Secretary

LG/JP

**EXHIBIT** (jus39aad)